

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE, RE
SOURCES FOR SUSTAINABLE
COMMUNITIES

Plaintiffs,

v.

CARGILL, INC. d/b/a CARGILL ANIMAL
NUTRITION, FERNDAL GRAIN,

Defendant.

Case No. 17-01188-RSL

CONSENT DECREE

I. STIPULATIONS

Plaintiffs Puget Soundkeeper Alliance and RE Sources for Sustainable Communities (together, "Soundkeeper") sent a sixty day notice of intent to sue letter to Defendant Cargill, Inc., d/b/a Cargill Animal Nutrition and/or Ferndale Grain ("Cargill") on May 24, 2017, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Cargill's Facility in Ferndale, Washington and seeking declaratory and injunctive relief, civil penalties and attorneys' fees and costs.


Soundkeeper and Cargill agree that settlement of these matters is in the best interests of the parties and the public, and that entry of this Consent Decree is the most appropriate means of

1 resolving this action.

2 Soundkeeper and Cargill stipulate to the entry of this Consent Decree without trial,
3 adjudication, or admission of any additional issues of fact or law regarding Soundkeeper's claims
4 or allegations set forth in its complaint and its sixty-day notice.

5 DATED this November 2, 2017

6 CARGILL, INC.

7
8 By 
9 Mark Lueking
10 Title: Managing Director, Cargill Feed
& Nutrition

11
12 PUGET SOUNDKEEPER ALLIANCE

13 By 
14 Chris Wilke
15 Title: Executive Director &
Soundkeeper

16 RE SOURCES FOR SUSTAINABLE COMMUNITIES

17 By 
18 Crina Hoyer
19 Title: Executive Director

20
21 **II. ORDER AND DECREE**

22 THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of
23 Consent Decree and the foregoing Stipulations of the parties. Having considered the Stipulations
24 and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as
25 follows:

- 26
1. This court has jurisdiction over the parties and subject matter of this action.
 2. Each signatory for the parties certifies for that party that he or she is authorized to enter into the agreements set forth below.
 3. This Consent Decree applies to and binds the parties and their successors and assigns.

1 4. This Consent Decree applies to the operation, oversight, or both by Defendant
2 Cargill of its Facility at 5744 3rd Ave, Ferndale, Washington (the "**Facility**"). Attachment A is a
3 depiction of the Facility that identifies areas discussed in this Consent Decree. The provisions of
4 this Consent Decree do not concern the use of the lot to the north of the Facility, across
5 Washington Street, which is used by third parties in the course of business with Cargill but not
6 owned or managed by Cargill.

7 5. This Consent Decree is a full and complete settlement of the claims in the
8 Complaint and all other claims known and unknown existing as of the date of entry of this
9 Consent Decree, other than those concerning the lot to the North of the facility, that could be
10 asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387. These claims are released and
11 dismissed with prejudice. Enforcement of this decree is Soundkeeper's exclusive remedy for any
12 violation of its terms.

13 6. This Consent Decree is a settlement of disputed facts and law. It is not an
14 admission or adjudication regarding any allegations by Soundkeeper in this case or of any fact or
15 conclusion of law related to those allegations.

16 7. Cargill agrees to the following terms and conditions in full and complete
17 satisfaction of the claims covered by this decree:

18 a. Cargill will comply fully with all conditions of its National Pollutant
19 Discharge Elimination System Permit No. WAR000355 (the "**NPDES permit**") and any
20 successor, modified, or replacement permit;

21 b. Cargill will install additional treatment as described in an engineering
22 report submitted to the Washington State Department of Ecology ("Ecology") dated May
23 15, 2017. Ecology has not commented on Cargill's engineering report or plan to install
24 additional treatment. Cargill will complete installing and begin operating the additional
25 treatment no later than October 31, 2017;

26 c. Cargill will replace filter media in downspout filtration treatment units for

1 the facility as needed;

2 d. Cargill will repair and replace asphalt when erosion or damage in an area
3 exceeds a 3" depth and is at least 18"x18" wide. Cargill will limit its annual expenditure
4 for asphalt repair or replacement under this Consent Decree to \$15,000 for the remainder
5 of this calendar year and \$6,000 per calendar year for future years. This paragraph applies
6 to Facility areas "in-use" for production and truck traffic only and does not apply to
7 Facility areas no longer in use nor does it apply to the property East of the tracks or on the
8 rail spur. Cargill will add inspection of asphalt conditions to its monthly stormwater
9 inspection forms;

10 e. Cargill will continue using its onsite mechanical sweeper operated by
11 Cargill personnel on an "as-needed" basis. Cargill will contract to have the Facility
12 vacuum swept monthly, November through April, and quarterly during the remainder of
13 the year, or more frequently as Cargill determines is needed. Cargill will have its
14 contractor vacuum sweep Area A (defined as the area south of Cargill buildings on 3rd
15 Avenue where stormwater does not drain to the treatment system) once to remove any
16 accumulated solids. If Cargill resumes using Area A to store materials which may pollute
17 stormwater, Cargill will resume sweeping Area A on the same schedule as the rest of the
18 Facility;

19 f. Cargill will promptly file a Notice of Intent with Ecology to update the
20 Ferndale Facility's permit coverage to add SIC code 2048 (Prepared Feed and Feed
21 Ingredients for Animals and Fowls, Except Dogs and Cats) to their activity under the
22 ISGP;

23 i. Cargill will begin sampling for the parameters associated with SIC code
24 2048, biochemical oxygen demand 5-day, nitrate and nitrite nitrogen,
25 and phosphorous, beginning the Fourth Quarter 2017;

26 ii. For any parameters that exceed benchmark values reported to Ecology

1 on Cargill's Fourth Quarter 2017 Discharge Monitoring Report (DMR)
2 Cargill will thereafter sample such parameters monthly for twelve
3 months, weather permitting. If the results for Cargill's accelerated
4 sampling for any such parameter meet the benchmark value in two
5 consecutive months, Cargill will resume sampling for each such
6 parameter on a standard quarterly schedule;

7 g. Cargill will sample treated effluent from roof drain downspout filter units
8 in Area A quarterly and provide those results to Soundkeeper beginning the first
9 stormwater monitoring event after new filter media is installed in the downspout units.
10 Cargill will install new filter media in the downspout units in Area A by October 31, 2017.
11 Cargill will subsequently replace downspout filter media in Area A when zinc levels
12 exceed 90% of the allowable benchmark, and replace such media within 30 days of
13 receiving the exceeding lab results;

14 h. Not later than October 31, 2017, Cargill will paint or remove the South
15 Wall and the galvanized shed in the southernmost area of the facility;

16 i. Not later than October 31, 2017, Cargill will treat the discharge from
17 downspout filters on the building along Second Street either with downspout filters or
18 redirecting the drainage to Cargill's centralized treatment system;

19 j. Not later than October 31, 2017, Cargill will implement applicable BMPs
20 on the lot on the East of the facility;

21 k. Not later than October 31, 2017, Cargill will amend its stormwater
22 pollution prevention plan ("SWPPP") to:

- 23 i. Include the Facility's additional treatment system;
24 ii. Include filter media replacement for the facility including the
25 southernmost area;
26 iii. Include the potential pollutant sources, parameters sampled,

1 monitoring for additional parameters; and applicable BMPs to
2 reflect those added by SIC code 2048;

3 iv. Expand on the description of material handling;

4 v. Add the lot on the East of the facility to the SWPPP including
5 applicable BMPs;

6 l. Cargill will forward all documentation evidencing compliance with the
7 above terms to Soundkeeper on a quarterly basis for one year; and

8 m. Cargill will forward all correspondence to and from the Department of
9 Ecology, and all documents provided to the Department of Ecology, related to the NPDES
10 Permit, to Soundkeeper on a quarterly basis for two years following entry of this Decree.

11 8. Not later than 7 days after the entry of this Consent Decree, Cargill will pay
12 \$70,000 (SEVENTY THOUSAND DOLLARS) to the Rose Foundation for Communities and the
13 Environment as described in **Attachment B** to this Consent Decree, for environmental benefit
14 projects benefitting the Puget Sound/Salish Sea. Payment will be made to the order of and
15 delivered to The Rose Foundation for Communities and the Environment. Payment shall include
16 the following reference in a cover letter or on the check: "Consent Decree, PSA v. Cargill Inc." A
17 copy of each check and cover letter, if any, shall be sent simultaneously to Soundkeeper.

18 9. Cargill will pay Soundkeeper's reasonable attorney and expert fees and costs in the
19 amount of \$37,584.16. Payment will be made within 7 days of the entry of this decree by check
20 payable and mailed to Smith & Lowney, PLLC, 2317 E. John Street, Seattle, Washington 98112,
21 attn: Richard Smith. This payment is full and complete satisfaction of any claims Soundkeeper
22 may have under the Clean Water Act for fees and costs.

23 10. A force majeure event is any event outside the reasonable control of Cargill that
24 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.
25 Delay in performance of a task required by this decree caused by a force majeure event is not a
26 failure to comply with the terms of this decree, provided that Cargill notifies Soundkeeper of the

1 event; the steps that Cargill will take to perform the task; the projected time that will be needed to
2 complete the task; and the measures that have been taken or will be taken to prevent or minimize
3 any impacts to stormwater quality resulting from delay in completing the task.

4 Cargill will notify Soundkeeper of the occurrence of a force majeure event as soon as
5 reasonably possible but, in any case, no later than ten days after the occurrence of the event. In
6 such event, the time for performance of the task will be extended for a reasonable period of time
7 following the force majeure event.

8 By way of example and not limitation, force majeure events include

- 9 a. Acts of God, war, insurrection, or civil disturbance;
10 b. Earthquakes, landslides, fire, floods;
11 c. Actions or inactions of third parties over which defendant has no control;
12 d. Restraint by court order or order of public authority;
13 e. Strikes; and
14 f. Litigation, arbitration, or mediation that causes delay.

15 11. This court retains jurisdiction over this matter. And, while this decree remains in
16 force, this case may be reopened without filing fee so that the parties may apply to the Court for
17 any further order that may be necessary to enforce compliance with this decree or to resolve any
18 dispute regarding the terms or conditions of this decree. In the event of a dispute regarding
19 implementation of, or compliance with, this decree, the parties must first attempt to resolve the
20 dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute.
21 Such a meeting should be held as soon as practical but must be held within thirty (30) days after
22 notice of a request for such a meeting to the other party and its counsel of record. If no resolution
23 is reached at that meeting or within thirty (30) days of the notice, whichever occurs first, either
24 party may file a motion with this court to resolve the dispute. The provisions of section 505(d) of
25 the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including
26 reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party,

1 shall apply to any proceedings seeking to enforce the terms and conditions of this Consent
2 Decree.

3 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
4 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
5 to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the
6 U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of
7 this Consent Decree by the parties, Soundkeeper shall serve copies of it upon the Administrator of
8 the U.S. EPA and the Attorney General.

9 13. This Consent Decree takes effect upon entry by the court. It terminates two years
10 after entry by the court.

11 14. All parties have participated in drafting this decree.

12 15. This Consent Decree may be modified only upon the approval of the court.

13 16. If for any reason the court should decline to approve this Consent Decree in the
14 form presented, this Consent Decree is voidable at the discretion of either party. The parties
15 agree to continue negotiations in good faith in an attempt to cure any objection raised by the court
16 to entry of this Consent Decree.

17 17. Notifications required by this Consent Decree must be in writing. The sending
18 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
19 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
20 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other
21 communication regarding this Consent Decree to be valid, it must be delivered to the receiving
22 party at the addresses listed below or to any other address designated by the receiving party in a
23 notice in accordance with this paragraph 16.

24 **if to Soundkeeper:**

25 Katelyn Kinn (katelyn@pugetsoundkeeper.org)
26 Puget Soundkeeper Alliance

1 130 Nickerson Street, Suite 107
2 Seattle, WA 98109

3 **and to:**

4 Lee First (leef@re-sources.org)
5 RE Sources for Sustainable Communities
2309 Meridian St.
6 Bellingham, WA 98225

7 **and to:**

8 Smith & Lowney PLLC (richard@smithandlowney.com)
2317 East John St.
9 Seattle, WA 98112

10 **if to Cargill:**

11 Katie Roek (Katie_Roek@cargill.com)
12 Cargill, Inc.
15407 McGinty Rd.W, MS-24
Wayzata, MN 55391

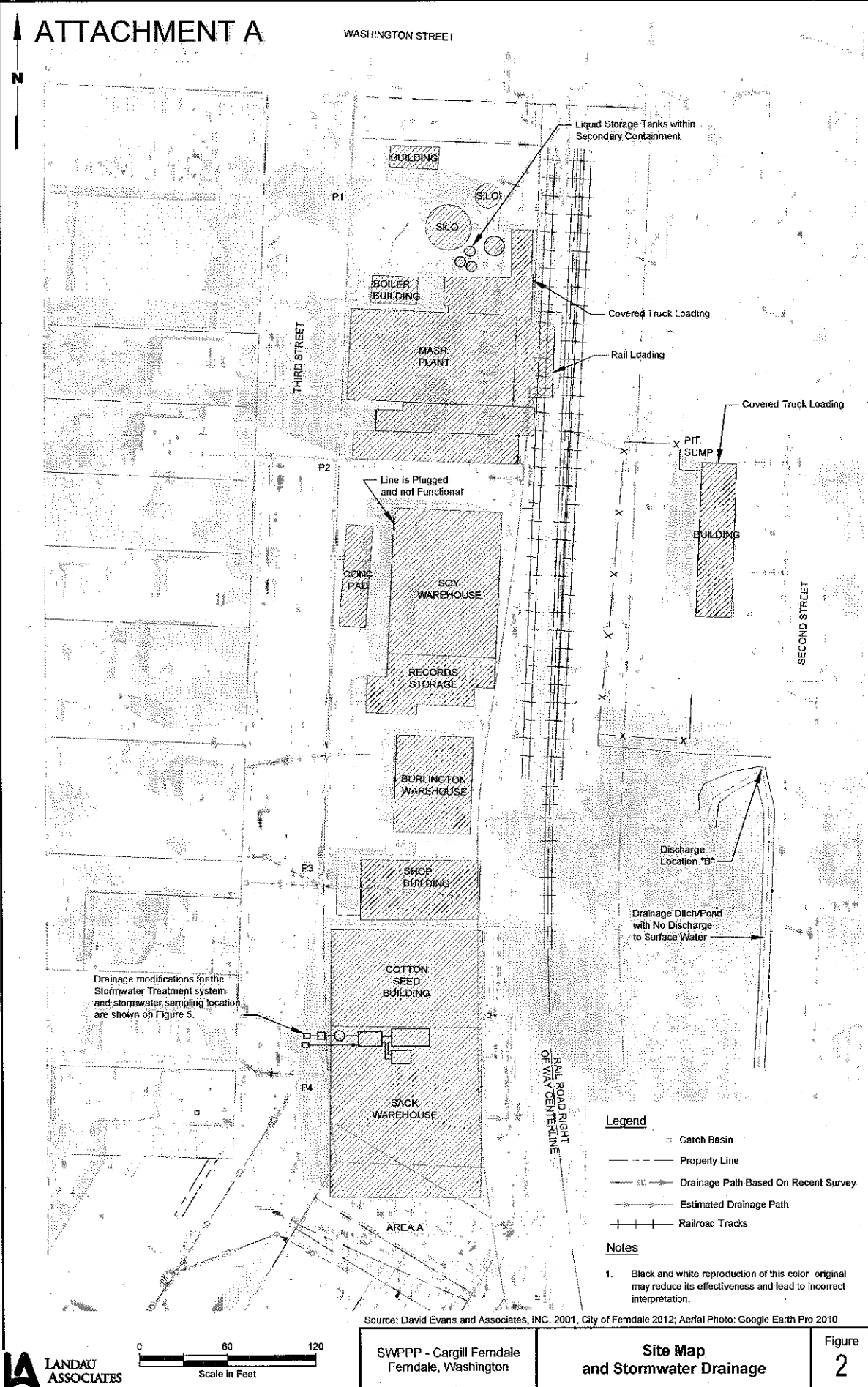
13 A notice or other communication regarding this Consent Decree will be effective when
14 received unless the notice or other communication is received after 5:00 p.m. on a business day,
15 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the
16 next business day. A notice or other communication will be deemed to have been received: (a) if
17 it is delivered in person or sent by registered or certified mail or by nationally recognized
18 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
19 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a
20 change in address for which no notice was given, then upon that rejection, refusal, or inability to
21 deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing
22 notice or other communication regarding this Consent Decree.
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1 DATED this 6th day of Feb., 2018.

2
3 *MS Lasnik*

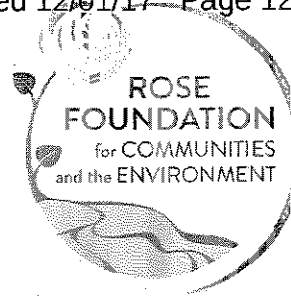
4 HON. ROBERT S. LASNIK
5 UNITED STATES DISTRICT JUDGE
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LANDAU ASSOCIATES, INC. (G:\Projects\1228\002\060\081\F02_SiteMapandSWDrainage.dwg (A) "Figure 2" 10/30/2017



ATTACHMENT B

1970 BROADWAY, SUITE 600, OAKLAND, CA 94612-2218
ROSE@ROSEFDN.ORG



WWW.ROSEFDN.ORG

OFFICE: 510.658.0702
FAX: 510.658.0732

October 23, 2017

Thomas Swegle
Environment & Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: Puget Soundkeeper Alliance v. Cargill, Inc. (Case No. 17-0118-RSL)

Dear Mr. Swegle,

This letter is intended to provide assurance that I have received the Consent Decree between Puget Soundkeeper Alliance and Cargill, Inc. and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

- 1) I understand that the Rose Foundation should receive funds from Cargill, Inc. as specified in the Consent Decree.
- 2) The Rose Foundation shall only use these Cargill, Inc. funds for environmentally beneficial project or projects to improve or protect the water quality of Puget Sound waters and the Salish Sea, with a focus on connected tributaries north of Bellingham including the Nooksack River, with a preference on the Lummi River watershed. The fund should be dispersed through the Rose Foundation's Puget Sound Stewardship & Mitigation Fund, a grantmaking fund, which is wholly dedicated to supporting projects which benefit the water quality of Puget Sound.
- 3) Due to the disproportionate impact of pollution from facilities such Cargill, Inc. to low-income neighborhoods and communities of color, the Rose Foundation's policy is to prioritize projects from these neighborhoods in selecting grantees.
- 4) After the funds have been disbursed, the Rose Foundation shall send a report to the Justice Department, the Court and the Parties describing how the funds were utilized and demonstrating conformance with the nexus of the Consent Decree.

Rose Foundation for Communities and the Environment

The Rose Foundation is a 501(c)(3) public charity (tax ID#94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. The Rose Foundation does not support lobbying activities that are prohibited by

Section 501(c)(3) of the IRS Code, and no portion of the Cargill, Inc. funds shall be used to support any political lobbying activities whatsoever.

- Work directly in schools and in the community to encourage environmental stewardship and civic participation.
- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

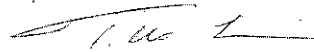
Within this broad range of activities, all of the Rose Foundation's work revolves around one or more of the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Levy and Powers are posted on the Foundation's website www.rosefdn.org.

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or tlittle@rosefdn.org.

Sincerely,



Tim Little, Executive Director